

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DAMIEN DARRELL LINDSEY

PLAINTIFF

v.

CAUSE NO. 1:19cv307-LG-RPM

CITY OF GULFPORT, ET AL.

DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

BEFORE THE COURT is the [22] Report and Recommendation entered by United States Magistrate Judge Robert P. Myers on April 29, 2021, in which he recommends that the [19] Motion to Dismiss filed by the City of Gulfport and Brad Sumrall should be granted. The Plaintiff Damien Darrell Lindsey has not filed an objection. After reviewing the record in this matter and the applicable law, the Court finds that the Report and Recommendation should be adopted as the opinion of this Court, and Lindsey's claims against the City of Gulfport and Brad Sumrall should be dismissed with prejudice.

DISCUSSION

Lindsey filed this Section 1983 lawsuit against the City of Gulfport, Brad Sumrall, and several individual officers. He claimed that he was accused of felony possession of a stolen firearm and that the charges resulted from entrapment and an illegal search and seizure by Gulfport police officers. The record reflects that Lindsey in fact was charged with unlawful possession of a firearm by a convicted felon. The Court stayed the instant case pending resolution of the underlying criminal charges. In their Motion to Dismiss, the City and Officer Sumrall seek to

dismiss Lindsey's complaint pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994).

They argue that Lindsey has entered a guilty plea to felony charges arising from the arrest that is the subject of Plaintiff's lawsuit.

Judge Myers' [22] Report and Recommendation was issued on April 29, 2021, and the Court sent a copy of it to Lindsey's last known address via certified mail. A return receipt has been filed in the record reflecting that the mail was undeliverable. (See Return Receipt, ECF No. 23). The Court has no way of contacting Lindsey, and Lindsey has not filed an objection to the Report and Recommendation.

Where no party has objected to the Magistrate Judge's report and recommendation, the Court need not conduct a de novo review of it. See 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only satisfy itself that there is no clear error on the face of the record. *Douglass v. United Serv. Auto Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996).

Having conducted the required review, the Court finds that Judge Myers' Report and Recommendation is neither clearly erroneous nor contrary to law. As a result, the [22] Motion to Dismiss is granted, and Lindsey's claims against the City of Gulfport and Brad Sumrall are dismissed with prejudice.

IT IS THEREFORE ORDERED AND ADJUDGED that the [22] Report and Recommendation entered by United States Magistrate Judge Robert P. Myers is **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED AND ADJUDGED that the [19] Motion to Dismiss filed by the City of Gulfport and Brad Sumrall is **GRANTED**. Damien Darrell Lindsey's claims against the City of Gulfport and Brad Sumrall are hereby **DISMISSED WITH PREJUDICE**.

SO ORDERED AND ADJUDGED this the 18th day of May, 2021.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE